

STEFAN DEMSKO

IBLA 80-373

Decided July 15, 1980

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease U-11861-A.

Affirmed as modified.

1. Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the proper Bureau of Land Management State Office on or before the anniversary date.

2. Oil and Gas Leases: Reinstatement

There is no authority to reinstate an oil and gas lease automatically terminated by operation of law for failure to pay rental when due if the rental is not tendered or paid within 20 days after the anniversary date of the lease.

APPEARANCES: Stefan Demsko, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Stefan Demsko appeals from the January 14, 1980, decision of the Utah State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease U-11861-A, which terminated by operation of law when payment of the annual rental was not received on November 1, 1979, the anniversary date of the lease. The payment was not received by BLM until November 26, 1979, arriving in an envelope bearing a postmark which stated: "SAINT LOUIS, MO, PM 24 NOV. 1979."

[1, 2] Any noncompetitive oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates automatically by operation of law if annual rental is not paid on or before the anniversary date. 30 U.S.C. § 188(b) (1976). Congress has determined that such a terminated lease may be reinstated only if the lessee shows that his failure to pay rental timely was either justifiable or not due to a lack of reasonable diligence, and the rental was paid on or tendered within 20 days after the due date. 30 U.S.C. § 188(c) (1976).

Appellant asserts that he mailed the payment on October 14, 1979, the same day on which, appellant contends, he wrote the check, and that the payment's late delivery to BLM resulted from the Post Office's loss of the mail.

The BLM decision suggested that if the lessee could provide documentation that his rental payment was mailed at an earlier date than indicated by the postmark the lease could be reinstated. This is not correct. The dispositive issue in this case concerns the date the payment was filed or tendered to BLM. Under the reinstatement provision of the Mineral Leasing Act, 30 U.S.C. § 188(c), there is no authority to reinstate an oil and gas lease if payment is not paid on or tendered within 20 days after the due date. It is unnecessary to determine whether the failure to pay was either justifiable or not due to a lack of reasonable diligence when this precondition for reinstatement is not met.

Appellant suggests there are conflicting statements in BLM communications to him because a letter dated December 26, 1979, indicated that the rental payment due November 1, 1979, was never received, whereas another communication dated November 30, 1979, stated that the rental was received November 26, 1979. The apparent inconsistency affords no basis for relief. The December 26, 1979, letter should more accurately have stated that the rental payment was not received on the due date and, therefore, the lease terminated by operation of law. We note that appellant's original check was returned to him with the notice of November 30, 1979, indicating that the lease had terminated and that the rental was received on November 26, 1979. Thereafter, on December 12, 1979, appellant submitted another payment for which a receipt was issued.

Because there is no evidence to show that payment was actually tendered or received by the BLM office on or before November 21, 1979, which is 20 days after the anniversary date when the payment was due, appellant's request for reinstatement must be denied for the reason that there is no authority to reinstate the lease under 30 U.S.C. § 188(c). Mobil Oil Corp., 35 IBLA 265 (1978). The BLM decision is modified to reflect this reason.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Joan B. Thompson
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

